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December 9, 1985

The Honorable James C. Miller, III
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Miller:

This letter is in response to your legislative referral memorandum of December 4, 1985 regarding the Central Intelligence Agency and Department of Energy draft reports on S. 1815, the Polygraph Protection Act of 1985.

The thrust of these reports (as well as of agency reports on a similar bill, H.R. 1524) is that contractors of specified agencies should be exempted from the provisions of the bill. DOE seeks to exempt employees of its contractors. CIA seeks to exempt contractors, or employees thereof, of agencies or organizations in the Intelligence Community.

We agree with those comments, but believe that they do not go far enough. Many other agencies (including bureaus of the Department of State not included within the Intelligence Community) employ contractors who have access to highly sensitive information. Pursuant to National Security Defense Directive 196 (November 1, 1985), all individuals with access to Sensitive Compartmented Information, Communications Security Information, and other special access program classified information will be subjected to aperiodic, non-lifestyle, counterintelligence-type polygraph examinations. We are concerned that the pending legislation could interfere with this Directive, insofar as contractors or their employees seek access to these types of highly classified information.

Accordingly, we recommend that the Administration seek amendment of Section 8 of S. 1815 to include a new subsection, as follows:

SEC. 8. The provisions of this Act shall not apply with respect to-

* * *

(3) contractors, or
employees thereof, of any

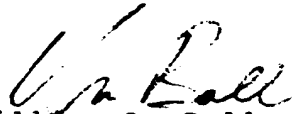
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U.S. Government agency or
department who seek or
receive access to U.S.
Government Sensitive
Compartmented Information,
Communications Security
Information, or other special
access program classified
information.

Such a Government-wide amendment could most appropriately be proposed by the National Security Council, the Office of Management and Budget, or the Director of Central Intelligence. This amendment might not obviate the need for certain particular exemptions, such as that contained in Section 8(2) for DOD contractors or in the CIA's proposed Section 8(3) for Intelligence Community contractors, insofar as those agencies seek exemption for polygraphing of individuals other than just those with access to the specified types of highly classified information. Nevertheless, the amendment would serve to prevent statutory interference with NSDD 196. A Government-wide submission would also eliminate the need for every agency subject to NSDD 196 to submit an individual request for exemption of its contractors.

If you wish to discuss this matter further, please contact Boris Feldman in the Office of the Legal Adviser (632-0445).

Sincerely,



William L. Ball, III
Assistant Secretary for
Legislative and Intergovernmental Affairs

cc: William J. Casey, Esquire